

SENATE BILL 2116

By Bell

AN ACT to amend Tennessee Code Annotated, Title 29,
relative to compensation for the diminution in
value of private property.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, is amended by adding the following
as a new chapter:

29-42-101. Short title; intent.

(a) This chapter is known and may be cited as the "Private Property Protection
Act."

(b) It is the intent of the general assembly to create a statutory process whereby
private property owners may seek judicial relief when a governmental entity has taken
action through regulation that results in the diminution in value of the subject property.

29-42-102. Definitions.

As used in this chapter:

(1) "Family member" means an owner's wife, husband, son, daughter,
mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-
in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent,
stepchild, grandparent, or grandchild, an estate of such a relative, or a legal
entity owned by one (1) or more relatives or the owner of the property;

(2) "Just compensation" means an amount equal to the reduction in the
fair market value of the affected property interest resulting from enactment or
enforcement of the land use regulation as of the date the owner makes written
demand for compensation under this chapter;

(3) "Land use regulation" means:

(A) An ordinance or resolution regulating the use of land or an interest therein; and

(B) Local government zoning ordinances, land division ordinances, and transportation ordinances;

(4) "Owner" means the present owner of real property, or an interest therein; and

(5) "Public entity" means a local governmental entity.

29-42-103. Compensation for diminution in value of real property.

If a public entity enacts or enforces a new land use regulation that restricts the existing uses of private real property or an interest therein and has the effect of reducing the fair market value of the property by a minimum of ten percent (10%) or fifty thousand dollars (\$50,000), whichever amount is greater, then the owner of the property must be paid just compensation.

29-42-104. Applicability.

Section 29-42-103 does not apply to a land use regulation:

(1) That restricts or prohibits activities commonly and historically recognized as public nuisances under common law. This subdivision (1) must be construed narrowly in favor of a finding of compensation under this chapter;

(2) That restricts or prohibits activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;

(3) To the extent the land use regulation is required to comply with federal law;

(4) That restricts or prohibits the use of a property for the purpose of selling pornography or performing nude dancing. This subdivision (4) does not affect or alter rights provided by the United States constitution or Tennessee constitution with respect to such activities; or

(5) That was enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.

29-42-105. Demand for just compensation.

(a) An owner may request just compensation under § 29-42-103 by making a written request to the public entity enacting or enforcing the land use regulation.

(b) Written demand for compensation under subsection (a) must be made within three (3) years of the enactment of the land use regulation or the date the owner of the property submits a land use application in which the enacted land use regulation is an approval criteria, whichever is earlier.

29-42-106. Duties of public entity after receiving demand for just compensation.

Within one hundred eighty (180) days of receiving a written demand under § 29-42-105, the public entity shall:

(1) Provide just compensation to the owner;

(2) Modify, remove, or choose not to apply the land use regulation to allow the owner to use the property for a use permitted at the time the owner acquired the property; or

(3) Deny that compensation is due under this chapter.

29-42-107. Cause of action.

(a) If a public entity denies that compensation is due or continues to enforce a land use regulation one hundred eighty (180) days after a written demand for just

compensation is received, then the owner has a cause of action against the public entity for compensation under this chapter in the circuit court for the county in which the real property is located, and the owner is entitled to reasonable attorney fees, expenses, costs, and other disbursements reasonably incurred to collect the just compensation.

(b) The failure of an owner of property to file an application for a land use permit with the public entity is not grounds for dismissal, abatement, or delay of a compensation claim under subsection (a).

(c) The remedy created by this chapter is in addition to another remedy under the Tennessee constitution or United States constitution, and is not intended to modify or replace other remedies.

SECTION 2. The headings to sections, parts, and chapters in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3. If a provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 4. This act takes effect upon becoming a law, the public welfare requiring it.